Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

APPENDIX

IN THE
Supreme Court of the United States

October Term, 1979

No. 79-488

GENERAL TELEPHONE COMPANY OF THE NORTHWEST, INC., et al.,
Petitioners,

v.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR CERTIORARI FILED SEPTEMBER 22, 1979
CERTIORARI GRANTED DECEMBER 10, 1979

RELEVANT DOCKET ENTRIES

Date	*Proceedings*	*Appendix Page No.*
1977		
April 8	Complaint	2
July 13	First Amended Complaint	7
August 12	Notice of Motion and Motion for Bifurcation	12
August 12	Memorandum of Points and Authorities in Support of Motion for Bifurcation	14
August 15	Order of Reference of Title VII Action	22
September 15	Motion to Dismiss Class Action	24
November 11	Report and Recommendation (see Pet. App. A-25 to A-32)..... Writ of Certiorari	
December 21	Order Denying Motion to Dismiss Class Aspects of the Complaint (see Pet. App. A-33) ..... Writ of Certiorari	
December 29	Defendant General Telephone's Motion for Reconsideration and Notice of Same	26
1978		
January 17	Order Granting Motion for Reconsideration and Amending Order filed December 21, 1977 re Appeal per 28 U.S.C. §1292(b)	28
April 4	Order (by Court of Appeals granting permission to appeal)	30
1979		
June 27	Court of Appeals decision (see Pet. App. A-1 to A-24) ..... Writ of Certiorari	

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ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

APPENDIX

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,
Plaintiff,

v.

GENERAL TELEPHONE COMPANY OF THE NORTHWEST, INC.,

and

LOCAL UNION NO. 89, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS,

and

WEST COAST TELEPHONE COMPANY OF CALIFORNIA, INC.,
Defendants.

CIVIL ACTION NO. C77-247M

COMPLAINT

FILED IN THE
UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
APR. 11, 1977
EDGAR SCOFIELD, Clerk
By ....., Deputy

JURISDICTION AND VENUE

1. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. Sections 451, 1343 and 1345. This is an action authorized and instituted pursuant to Section 706(f)(1) and (3) of Title VII, Civil Rights Act of 1964 as amended, 42 U.S.C. Section 2000e *et seq.* (Supp. II, 1972), hereinafter referred to as "Title VII."

2. The unlawful employment practices alleged below were and are now being committed within the State of Washington, Western District of Washington, and elsewhere.

3. Plaintiff, Equal Employment Opportunity Commission (hereinafter, the "Commission"), is an agency of the United States of America charged with the administration, interpretation and enforcement of Title VII and is expressly authorized to bring this action by Section 706(f)(1), 42 U.S.C. Section 2000e-5(f)(1).

4. Since at least July 2, 1965, Defendant, General Telephone Company of the Northwest, Inc. (hereinafter "General Telephone"), has continuously been and is now a Washington corporation, doing business in the State of Washington and City of Everett, where it is engaged in providing telephone services to the public and has continuously and does now employ more than twenty-five employees.

5. Since at least July 2, 1965, General Telephone has continuously been and is now an employer engaged in an industry affecting commerce within the meaning of Section 701(b), (g) and (h) of Title VII, 42 U.S.C. Section 2000e-(b), (g) and (h).

6. Since at least July 2, 1965, Defendant Local Union No. 89, International Brotherhood of Electrical Workers (hereinafter "Local 89") has continuously been and is now an unincorporated association of participating employees which deals with General Telephone concerning terms and conditions of employment. Local 89's membership has continuously been and is now in excess of twenty-five and Local 89 is the certified representative of employees of General Telephone.

7. Since at least July 2, 1965, Local 89 has continuously been and is now a labor organization engaged in an industry affecting commerce within the meaning of Section 701(d) and (e) of Title VII, 42 U.S.C. Section 2000e-(d) and (e).

8. Defendant West Coast Telephone Company of California, Inc. (hereinafter "West Coast") is a subsidiary of General Telephone. Since at least July 2, 1965, it has operated General Telephone's facilities in California. It maintains common management personnel and general office headquarters with General Telephone and has continuously and does now employ more than twenty-five employees.

9. Since at least July 2, 1965, West Coast has continuously been and is now an employer engaged in an industry affecting commerce within the meaning of Section 701(b), (g) and (h) of Title VII, 42 U.S.C. Section 2000e-(b), (g) and (h).

10. More than thirty (30) days prior to the institution of this lawsuit, persons claiming to be aggrieved filed charges with the Equal Employment Opportunity Commission alleging violations of Title VII by Defendant General Telephone and Defendant Local 89. All conditions precedent to the institution of this lawsuit have been fulfilled.

11. Since July 2, 1965, and continuously up until the present time, Defendant General Telephone has intentionally engaged in unlawful employment practices at its facilities in Washington, Oregon, Idaho, Montana and California, in violation of Section 703(a) of Title VII.

12. Since July 2, 1965, and continuously up until the present time, Defendant West Coast has intentionally engaged in unlawful employment practices at its California facilities in violation of Section 703(a) of Title VII.

13. The unlawful employment practices engaged in by General Telephone and West Coast and referred to in paragraphs 11 and 12 above include, but are not limited to, the following:

A. Failing and refusing to give employees maternity leave of absence, on the same basis as temporary leave provided to employees suffering from other types of disabilities, because of their sex.

B. Excluding women from craft jobs which exclusion operates to limit the employment and advancement opportunities of women because of their sex.

C. Excluding women from managerial positions at General Telephone's facility in Beaverton, Oregon, because of their sex.

D. Failing to eliminate their unlawful employment practices and to correct the present effects of their past discrimination against women because of sex.

14. Since July 2, 1965, and continuously up until the present time, Defendant Local 89 has intentionally engaged in unlawful employment practices in its representation of General Telephone's employees in Washington, Oregon, Idaho and Montana, in violation of Section 703(c) of Title VII, by being a party to collective bargaining agreements with General Telephone which operate to deny pregnant female employees of General Telephone employment opportunities and benefits equal to those provided to male employees, and which operate to perpetuate the effects of General Telephone's previous discriminatory practices.

15. The effect of the policies and practices complained of in paragraphs 11, 12, 13 and 14 above has been to deprive women of equal employment opportunities and otherwise adversely affect their status as employees or applicants for employment because of their sex.

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully prays that this Court:

A. Grant a permanent injunction enjoining Defendants, their officers, agents, employees, successors, assigns and all persons in active concert or participation with them, from engaging in any employment practice which discriminates because of sex.

B. Order Defendants to institute and carry out policies, practices and affirmative action programs which provide equal employment opportunities for women, and which eradicate the effects of their past and present unlawful employment practices.

C. Order Defendants to make whole those persons adversely affected by the unlawful employment practices described herein, by providing appropriate back pay, with interest, in an amount to be proved at trial and other affirmative relief necessary to eradicate the effects of their unlawful employment practices.

D. Grant such further relief as the Court deems necessary and proper.

E. Award the Commission its costs in this action.

Dated: April 8, 1977

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EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
2401 "E" Street, N.W.
Washington, D.C. 20506

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,
Plaintiff,

v.

GENERAL TELEPHONE COMPANY OF THE NORTHWEST, INC.,

and

LOCAL UNION NO. 89, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS,

and

WEST COAST TELEPHONE COMPANY OF CALIFORNIA, INC.,
Defendants.

CIVIL ACTION NO. C77-247M

FIRST AMENDED COMPLAINT

FILED IN THE
UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AUG 1, 1977
EDGAR SCOFIELD, Clerk
By ....., Deputy

JURISDICTION AND VENUE

1. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. Sections 451, 1343 and 1345. This is an action authorized and instituted pursuant to Section 706(f)(1) and (3) of Title VII, Civil Rights Act of 1964 as amended, 42 U.S.C. Section 2000e *et seq.* (Supp. II, 1972), hereinafter referred to as "Title VII."

2. The unlawful employment practices alleged below were and are now being committed within the State of Washington, Western District of Washington, and elsewhere.

3. Plaintiff, Equal Employment Opportunity Commission (hereinafter, the "Commission"), is an agency of the United States of America charged with the administration, interpretation and enforcement of Title VII and is expressly authorized to bring this action by Section 706(f)-(1), 42 U.S.C. Section 2000e-5(f)(1).

4. Since at least July 2, 1965, Defendant, General Telephone Company of the Northwest, Inc. (hereinafter "General Telephone"), has continuously been and is now a Washington corporation, doing business in the State of Washington and City of Everett, where it is engaged in providing telephone services to the public and has continuously and does now employ more than twenty-five employees.

5. Since at least July 2, 1965, General Telephone has continuously been and is now an employer engaged in an industry affecting commerce within the meaning of Section 701(b), (g) and (h) of Title VII, 42 U.S.C. Section 2000e-(b), (g) and (h).

6. Since at least July 2, 1965, Defendant Local Union No. 89, International Brotherhood of Electrical Workers (hereinafter "Local 89") has continuously been and is now an unincorporated association of participating employees which deals with General Telephone concerning terms and conditions of employment. Local 89's membership has continuously been and is now in excess of twenty-five and Local 89 is the certified representative of employees of General Telephone.

7. Since at least July 2, 1965, Local 89 has continuously been and is now a labor organization engaged in an industry affecting commerce within the meaning of Section 701-(d) and (e) of Title VII, 42 U.S.C. Section 2000e-(d) and (e).

8. Defendant West Coast Telephone Company of California, Inc. (hereinafter "West Coast") is a subsidiary of General Telephone. Since at least July 2, 1965, it has operated General Telephone's facilities in California. It maintains common management personnel and general office headquarters with General Telephone and has continuously and does now employ more than twenty-five employees.

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10. More than thirty (30) days prior to the institution of this lawsuit, persons claiming to be aggrieved filed charges with the Equal Employment Opportunity Commission alleging violations of Title VII by Defendant General Telephone and Defendant Local 89. All conditions precedent to the institution of this lawsuit have been fulfilled.

11. Since July 2, 1965, and continuously up until the present time, Defendant General Telephone has intentionally engaged in unlawful employment practices at its facilities in Washington, Oregon, Idaho, Montana and California, in violation of Section 703(a) of Title VII.

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gaged in unlawful employment practices at its California facilities in violation of Section 703(a) of Title VII.

13. The unlawful employment practices engaged in by General Telephone and West Coast and referred to in paragraphs 11 and 12 above, include, but are not limited to, the following:

A. Failing and refusing to give employees maternity leave of absence, on the same basis as temporary leave provided to employees suffering from other types of disabilities, because of their sex.

B. Excluding women from craft jobs which exclusion operates to limit the employment and advancement opportunities of women because of their sex.

C. Excluding women from managerial positions because of their sex.

D. Failing to eliminate their unlawful employment practices and to correct the present effects of their past discrimination against women because of sex.

14. Since July 2, 1965, and continuously up until the present time, Defendant Local 89 has intentionally engaged in unlawful employment practices in its representation of General Telephone's employees in Washington, Oregon, Idaho and Montana, in violation of Section 703-(c) of Title VII, by being a party to collective bargaining agreements with General Telephone which operates to deny pregnant female employees of General Telephone employment opportunities and benefits equal to those provided to male employees, and which operate to perpetuate the effects of General Telephone's previous discriminatory practices.

15. The effect of the policies and practices complained of in paragraphs 11, 12, 13 and 14 above has been to deprive women of equal employment opportunities and otherwise adversely affect their status as employees or applicants for employment because of their sex.

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully prays that this Court:

A. Grant a permanent injunction enjoining Defendants, their officers, agents, employees, successors, assigns and all persons in active concert or participation with them, from engaging in any employment practice which discriminates because of sex.

B. Order Defendants to institute and carry out policies, practices and affirmative action programs which provide equal employment opportunities for women, and which eradicate the effects of their past and present unlawful employment practices.

C. Order Defendants to make whole those persons adversely affected by the unlawful employment practices described herein, by providing appropriate back pay, with interest, in an amount to be proved at trial and other affirmative relief necessary to eradicate the effects of their unlawful employment practices.

D. Grant such further relief as the Court deems necessary and proper.

E. Award the Commission its costs in this action.

Dated: July 13, 1977

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2401 "E" Street, N.W.
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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,
Plaintiff,
v.
GENERAL TELEPHONE COMPANY OF THE NORTHWEST, INC.,
and
LOCAL UNION NO. 89, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS,
and
WEST COAST TELEPHONE COMPANY OF CALIFORNIA, INC.,
Defendants.

CIVIL ACTION NUMBER C-77-247 M

NOTICE OF MOTION AND MOTION FOR BIFURCATION

FILED IN THE
UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AUG. 15, 1977
EDGAR SCOFIELD, Clerk
By ....., Deputy

NOTICE is hereby given that plaintiff Equal Employment Opportunity Commission will move the Court for and order bifurcating the issue of class liability from the issue of individual damages pursuant to Rule 42(b), Fed. R. Civ. Proc. This motion will be considered by the Honorable Walter T. McGovern, a judge of the above Court, at 9:30 a.m. on Friday, September 16, 1977, at the United States Courthouse, Seattle, Washington. Pursuant

to 7(b)(5), Local Civil Rules for the United States District Court for the Western District of Washington unless ordered by the Court, this motion will be decided without a hearing.

DATED: August 12, 1977

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,
Plaintiff,
v.
GENERAL TELEPHONE COMPANY OF THE NORTHWEST, INC.,
and
LOCAL UNION NO. 89, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS,
and
WEST COAST TELEPONE COMPANY OF CALIFORNIA, INC.,
Defendants.

CIVIL ACTION NUMBER C-77-247 M

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR BIFURCATION

FILED IN THE
UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AUG. 15, 1977
EDGAR SCOFIELD, Clerk
By ....., Deputy

The complaint herein alleges Company-wide patterns and practices of class discrimination and seeks back pay and other individual relief for a very large number of affected classmembers.[1] As in all pattern and practice actions brought under Title VII, a finding of class liability

1. Based upon the administrative record, there are in excess of 2,000 persons affected by the alleged exclusion of women from craft and management positions employed in Company facilities scattered over five states—Washington, Oregon, Idaho, Montana and California.

will entitle classmembers to present present personal claims for back pay and other specific relief; and, after all vacancies filled during the back pay period have been flow charted, back pay will be awarded to those eligible claimants who the court determines would have occupied those vacancies but for the class discrimination, provided their back pay records establish a loss of wages.[2] Because of the tension between the manageability problems attending such numerous and frequently diverse claimants on the one hand, and Title VII's policy of compensation for discrimination-caused economic injuries on the other, courts have taken a bifurcated approach to class actions and Government actions seeking back pay.[3]

The reasons are simply stated. Bifurcation allows suspension of discovery and trial of all individual liability issues until after there have been discovery, trial and findings as to class liability. To the extent that defendant prevails at the class liability stage ("Stage I"), the lengthy discovery and complex evidentiary problems concerning

2. See generally, *Teamsters v. United States,* .. U.S. .., 14 EPD ¶7579 (1977); *United States v. U.S. Steel Corp.,* 520 F.2d 1043 (5th Cir. 1975), *Swint et al. v. Pullman Standard et al.,* 539 F.2d 77 (5th Cir. 1976) and *Baxter v. Savannah Sugar Refining Corp.,* 495 F.2d 437 (5th Cir. 1974).

3. E.g.: *Teamsters v. United States, supra; United States v. U.S. Steel Corp., supra; Baxter v. Savannah Sugar Refining, Corp., supra; United States v. Masonry Contractors Assoc.,* 497 F.2d 871 (6th Cir. 1974); *Senter v. General Motors Corp.,* 532 F.2d 511 (6th Cir. 1976); *cert. den.,* .. U.S. .., 12 EPD ¶11,207 (1976); *Love v. Pullman Company,* 10 EPD ¶10,288 (D.C. Colo. 1975); *United States v. Lee Way Motor Freight, Inc.,* 7 EPD ¶9066 (W.D. Okla, 1973); *Ellison v. Rock Hill Printing and Finishing Co.,* 64 F.R.D. 415, 8 EPD ¶9627 (D.C. S.C. 1974); *Chastang v. Flynn and Emrich Co.,* 365 F. Supp. 957 (D.C. Md. 1973); *Paddison v. Fidelity Bank,* 60 F.R.D. 695, 7 EPD ¶9308 (E.D. Pa. 1973); *Piva v. Xerox Corp.,* 11 EPD ¶10,673 (N.D. Cal. 1975); *Waters v. Heublein, Inc.,* 11 EPD ¶10,620 (N.D. Cal. 1975); *Women's Committee v. National Broadcasting Co. et al.,* .. F. Supp. .., 12 EPD ¶11,135 (S.D. N.Y. 1976).

individual membership in the class and individual damages and other relief ("Stage II") will be unnecessary, and much judicial time and litigation expense will have been saved. If plaintiff prevails at Stage I, the likelihood of settlement is enhanced and judicial time may still be saved.[4] Absent a settlement, the parties of course will resume discovery on the back pay issue; but since there is little if any overlap in the evidence requirements of class discrimination (statistics and systemic practices) and individual discrimination (individual employment dates, qualifications, job interests, work histories, mitigation factors, etc.), final disposition of the action will not have been delayed by bifurcation.[5] Last, but not least, bifurcation preserves the option of referring all relief issues to the magistrate or a special master.[6]

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4. *Ellison v. Rock Hill Printing and Finishing Co., supra,* note 3. Back pay settlements were achieved after findings of liability in, e.g., *Robinson v. Lorillard,* 444 F.2d 791 (4th Cir. 1971) and *United States v. Georgia Power Co.,* 474 F.2d 906 (5th Cir. 1973). See also *Bryan v. Pittsburgh Plate Glass Co.,* .. F. Supp. .., 6 EPD ¶8935 (W.D. Pa. 1973) (settlement achieved prior to completion of the liability phrase); *Women's Committee v. National Broadcasting Co. et al., supra,* (same); and *EEOC v. Newspaper and Mail Deliverers' Union of New York and Vicinity et al.,* 384 F. Supp. 585 (S.D. N.Y.) (settlement achieved after trial on liability but prior to findings.)

Of course, "conciliation and voluntary settlement are the preferred means for resolving employment discrimination disputes," *United States v. Allegheny-Ludlum Industries,* 517 F.2d 826, 846 (5th Cir. 1975); so that, by enhancing settlement, bifurcation of Title VII trials serves an important public policy.

5. *Love v. Pullman Co., supra,* note 3; but see *Western Electric Co. v. Stern,* .. F.2d .., 12 EPD ¶11,232 (3rd Cir. 1976) (interrogatories seeking class representative's evidence as to individual discriminatees must be allowed at Stage I where relevant to a possible defense to class liability).

6. As with bifurcation, reference to the magistrate or a special mater saves judicial time and may produce settlement after the initial trial if defendants are found liable; and like bifurcation, it serves to relieve the tension between the manageability problems posed by large back pay actions and the statutory mandate that economic discriminatees be made whole. Thus it is a much used procedural device in back pay cases. See,

Rule 42(b) of the Federal Rules of Civil Procedure provides, in relevant part, that:

> The court, in furtherance of convenience or to avoid prejudice, or when separate trials may be conducive to expedition and economy, may order a separate trial of any . . . issues . . . .

Except in the Fifth Circuit bifurcation has been ordered as a matter of discretion. But the Fifth Circuit, believing that separate trials of Title VII class actions are not only "conducive" to expedition and economy, but necessary thereto, has long since mandated that procedure;[7] and now the Supreme Court, as demonstrated by the following excerpts from *Teamsters v. United States, supra,* has approved and apparently prescribed this Fifth Circuit rule:

> "The Court of Appeals was also correct in the view that individual proof concerning each class member's specific injury was appropriately left to proceedings to determine individual relief. In a suit brought by the Government under §707(a) of the Act the District Court's initial concern is in deciding whether the Government has proved that the defendant has engaged in a pattern or practice of discriminatory conduct". *Id* at note 24.

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e.g., *EEOC v. Steamfitters, L. 638 et al.,* .. F.2d .., 12 EPD ¶11,212 (2nd Cir. 1976); *Hairston v. McLean Trucking Co.,* 520 F.2d 226 (4th Cir. 1975); *United States v. U.S. Steel Corp., supra,* note 2; *Meadows v. Ford Motor Co.,* 510 F.2d 939 (6th Cir. 1975); *United States v. Detroit Edison Co.,* 515 F.2d 301 (6th Cir. 1975); *Sprogis v. United Airlines,* 444 F.2d 1194 (7th Cir. 1971); *United States v. Wood, Wire & Metal Lathers, L. 42,* 328 F. Supp. 429 (S.D. N.Y. 1971); *United States, v. Lee Way Motor Freight Inc., supra,* note 3; *Cooper v. Phillip Morris, Inc.,* 9 EPD ¶9929 (W.D. Ky. 1974); *Newman v. Avco,* 10 EPD ¶10,300 (M.D. Tenn. 1975); *Glus v. G.L. Murphy Co.,* 320 F. Supp. 563 (W.D. Pa. 1971); *Hill v. Western Electric Co.,* .. F. Supp. .., 12 FEP Cases 1157 (E.D. Va. 1976); *Ostapowitz v. Johnson Bronze Co.,* 7 EPD ¶9280 (W.D. Pa. 1974); *English v. Seaboard Coast Line R.R. Co.,* .. F. Supp. .., 13 EPD paras. 11,283 and 11,284 (S.D. Ga. 1976).

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7. *Baxter v. Savannah Sugar Refining Corp., supra.*

"At the initial, "liability" stage of a pattern or practice suit the Government is not required to offer evidence that each person for whom it will ultimately seek relief was a victim of the employer's discriminatory policy. Its burden is to establish a prima facie case that such a policy existed. The burden then shifts to the employer to defeat the prima facie showing of a pattern or practice by demonstrating that the Government's proof is either inaccurate or insignificant. An employer might show, for example, that the claimed discriminatory pattern is a product of pre-Act hiring rather than unlawful post-Act discrimination, or that during the period it is alleged to have pursued a discriminatory policy it made too few employment decisions to justify the inference that it had engaged in a regular practice of discrimination." *Id.* at p. 4861.

"The employer's defense must, of course, be designed to meet the prima facie case of the Government. We do not mean to suggest that there are any particular limits on the type of evidence an employer may use. The point is that at the liability stage of a pattern or practice trial the focus often will not be on individual hiring decisions, but on a pattern of discriminatory decisionmaking. While a pattern might be demonstrated by examining the discrete decisions of which it is composed, the Government's suits have more commonly involved proof of the expected result of a regularly followed discriminatory policy. In such cases, the employer's burden is to provide a nondiscriminatory explanation for the apparently discriminatory result. See n. 20, and cases cited therein, *supra*." *Id.* at note 46.

"If an employer fails to rebut the inference that arises from the Government's prima facie case, a trial court may then conclude that a violation has occurred and determine the appropriate remedy. Without any further evidence from the Government, a court's finding of a pattern or practice justifies an award of prospective relief." *Id.* at p. 4861.

"When the Government seeks individual relief for the victims of the discriminatory practice, a district court must usually conduct additional proceedings after the liability phase of the trial to determine the scope of individual relief. The petitioners' contention in this case is that if the Government has not, in the course of proving a pattern or practice, already brought forth specific evidence that each individual was discriminatorily denied an employment opportunity, it must carry that burden at the second, "remedial" stage of trial. That basic contention was rejected in the *Franks* case. As was true of the particular facts in *Franks*, and is typical of Title VII pattern or practice suits, the question of individual relief does not arise until it has been proved that the employer has followed an employment policy of unlawful discrimination. The force of that proof does not dissipate at the remedial stage of the trial. The employer cannot, therefore, claim that there is no reason to believe that its individual employment decisions were discriminatorily based; it has already been shown to have maintained a policy of discriminatory decisionmaking." *Id.* at p. 4861.[8]

Plaintiff views this language as requiring bifurcation of Title VII actions seeking individual relief for systemic discrimination.

CONCLUSION

Teamsters involved a class of 400.[9] The instant action involves a class of 2,000.[10] Certainly, *Teamsters* represents

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8. As the Supreme Court makes explicit in *Teamsters*, "pattern and practice" cases call for the same bifurcated treatment irrespective of whether they are brought under Section 706(f)(1) or Section 707(a). *Id.* at p. 4861 and n. 45., citing *Franks v. Bowman Transportation Co.*, 424 U.S. 747 (1976).

9. *Teamsters v. United States, supra,* at p. 4865.

10. See note 1.

compelling, if not binding, precedent for the disposition of this matter.

Respectfully submitted,

DATED: August 12, 1977

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JOHN R. LOW
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CERTIFICATE OF SERVICE

It is hereby certified that copies of the foregoing NOTICE OF MOTION AND MOTION FOR BIFURCATION and MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR BIFURCATION have been mailed this day, postage pre-paid, to the following persons by depositing said copies in the U.S. Mail addressed as follows:

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FRITZ WOLLETT
Trial Attorney

Dated: August 12, 1977

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, *Plaintiff,* v. GENERAL TELEPHONE CO. OF THE NORTHWEST, INC., et al, *Defendants.*	NO. C77-247M ORDER OF REFERENCE OF TITLE VII ACTION

FILED IN THE
UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AUG. 15, 1977
EDGAR SCOFIELD, Clerk
By ....., Deputy

The Court finds that this cause cannot be scheduled for trial within one hundred and twenty days after issue has been joined and that it should therefore be referred to the United States Magistrate pursuant to Rule 53, Fed. R. Civ. P., and 42 U.S.C. Sec. 2000e-5(f)(5), and local Magistrate's Rule MR 21.

Accordingly, IT IS ORDERED that this cause be and it hereby is referred to United States Magistrate Philip Sweigert as Special Master, to hear this matter on the merits and thereafter to report to the Court with recommended Findings of Fact, Conclusions of Law and Disposition. That report shall be subject to review by this Court, in accordance with the provisions of Rule 53(e), Fed. R. Civ. P. No transcript of the evidence need be filed with the

report of the Special Master unless one or more of the parties arranges for the preparation and filing thereof.

All pretrial or trial dates previously set by this Court are hereby vacated.

The Clerk of this Court is directed to send an uncertified copy of this order to the United States Magistrate and to all counsel of record.

DATED this 15th day of August, 1977

WALTER T. McGOVERN
Chief United States District Judge

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,
Plaintiff,
v.
GENERAL TELEPHONE COMPANY OF THE NORTHWEST, INC.,
and
LOCAL UNION NO. 89, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS,
and
WEST COAST TELEPHONE COMPANY OF CALIFORNIA, INC.,
Defendants.

CIVIL NO. C77-247M

MOTION TO DISMISS CLASS ACTION

FILED IN THE
UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
SEP. 16, 1977
EDGAR SCOFIELD, Clerk
By ....., Deputy

RECEIVED
SEP. 16, 1977
PHILIP K. SWEIGERT
U.S. MAGISTRATE

COME NOW the defendants, General Telephone Company of the Northwest, Inc., and West Coast Telephone Company of California, Inc., and move this Court for an

order dismissing the class action aspects of plaintiff's complaint.

DATED this 15th day of September, 1977.

JAMES R. DICKENS
of KARR, TUTTLE, KOCH, CAMPBELL, MAWER & MORROW
Attorneys for Defendants
General Telephone Company of the Northwest, Inc., and
West Coast Telephone Company of California, Inc.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,
Plaintiff,
v.
GENERAL TELEPHONE COMPANY OF THE NORTHWEST, INC.,
and
LOCAL UNION No. 89, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS,
and
WEST COAST TELEPHONE COMPANY OF CALIFORNIA, INC.,
Defendants.

No. C77-247M

DEFENDANT GENERAL TELEPHONE'S MOTION FOR RECONSIDERATION AND NOTICE OF SAME

FILED IN THE
UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
DEC. 29, 1977
JOE R. ROMANE, Clerk
By ....., Deputy

COME NOW the defendants, General Telephone Company of the Northwest, Inc. and West Coast Telephone Company of California, Inc., and move this Court for reconsideration of its Order filed December 21, 1977 (mistakenly dated November 21, 1977) denying defendants' request for the certification of the class action aspects of this case for appeal to the Court of Appeals pursuant to 28 U.S.C. §1292(b). This motion is based on the Memorandum in Support of Motion for Reconsideration, which is filed herewith, and the other pleadings already of record.

Notice is hereby given that this motion for reconsideration will be presented to the Court on Friday, January 13, 1978, at 9:30 a.m. in accordance with Civil Rule 6(d), as amended, of the Local Rules, Western District of Washington. Pursuant to Civil Rule 7(b)(5) of the Local Rules, there will not be oral argument unless so ordered by the Court.

DATED this 29th day of December, 1977.

JAMES R. DICKENS and
RICHARD J. OMATA
of KARR, TUTTLE, KOCH, CAMPBELL, MAWER & MORROW, P.S.
Attorneys for Defendants
General Telephone Company of the Northwest, Inc. and West Coast Telephone Co. of California, Inc.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, *Plaintiff,* v. GENERAL TELEPHONE COMPANY OF THE NORTHWEST, INC., et al, *Defendants.*	NO. C77-247M ORDER GRANTING MOTION FOR RECONSIDERATION AND AMENDING ORDER FILED DECEMBER 21, 1977 RE APPEAL PER 28 U.S.C. §1292(b)

FILED IN THE
UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
JAN. 17, 1978
JOE R. ROMANE, Clerk
By ....., Deputy

The Court has reviewed Defendant's Motion for Reconsideration of the Court's decision regarding certification for immediate appeal its Order filed December 21, 1977, the legal memoranda of the parties, and the records and files in this case:

It is therefore ORDERED:

(1) Defendants' Motion for Reconsideration and alternative request that the Court's Order filed December 21, 1977 be certified for immediate appeal pursuant to 28 U.S.C. §1292(b) is GRANTED;

(2) The Order filed December 21, 1977 (dated November 21, 1977) is hereby amended to include the following statement:

"The Court is of the opinion that this Order involves a controlling question of law as to which there is substantial ground for difference of opinion, namely, whether the Equal Employment Opportunity Commission is required to comply with Rule 23 of the Federal Rules of Civil Procedure in order to bring suit on behalf of a class, and that an immediate appeal from this Order as authorized by 28 U.S.C. §1292(b) may materially advance the ultimate termination of this litigation."

(3) An application for an appeal pursuant to 28 U.S.C. §1292(b) shall not stay discovery in this case.

The Clerk of this Court is directed to furnish uncertified copies of this Order to all counsel of record and to the United States Magistrate.

DATED this 17th day of January, 1978.

WALTER T. McGOVERN
Chief United States District Judge

Presented by:

JAMES R. DICKENS
of KARR, TUTTLE, KOCH, CAMPBELL,
MAWER & MORROW, P.S.
Attorneys for Defendants, General Telephone Company of the Northwest, Inc. and West Coast Telephone Company of California, Inc.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

EQUAL OPPORTUNITY EMPLOYMENT COMMISSION,
Plaintiff-Respondent,
v.
GENERAL TELEPHONE CO. OF THE NORTHWEST, INC.,
and
WEST COAST TELEPHONE CO. OF CALIFORNIA, INC.,
Defendants-Petitioners,
and
LOCAL UNION NO. 89, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS,
Defendant.

No. 78-8017
CIV D.C.
77-247
Western
Washington,
Seattle
ORDER

FILED
APR. 4, 1978
EMIL E. MELFI, JR., Clerk
U. S. COURT OF APPEALS

FILED IN THE
UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
APR. 6, 1978
JOE R. ROMANE, Clerk
By ....., Deputy

Before: WRIGHT and SNEED, Circuit Judges

Upon due consideration, the Court issues the following order:

(a) the petition for permission to appeal is granted; and

(b) the motion for expedited hearing is denied without prejudice to its renewal after briefing is completed.

/s/ JOSEPH T. SNEED
United States Circuit Judge